Constellation NewEnergy

A Member of the Constellation Energy Group

Request for Public Comment Concerning the Implementation of Governor Blagojevich's Proposal for a Sustainable Energy Plan for Illinois

March 9, 2005

Constellation NewEnergy, Inc. ("NewEnergy"), a certificated Alternative Retail Electric Supplier ("ARES"), appreciates the opportunity to provide comments with respect to Governor Blagojevich's proposal for a Sustainable Energy Plan for the State of Illinois ("the Plan").

NewEnergy has been a leader in the development of competitive energy markets across North America. Our experience in competitive energy markets, outstanding customer service, specialized products and services, and the strong values behind our business have made us the supplier of choice to many of North America's largest corporations and most demanding energy users.

NewEnergy is pleased to provide the following general comments ("Comments") to the Initial List of Questions, which was posted on the Illinois Commerce Commission's ("Commission") website on March 2, 2005. Based upon the limited time available to prepare these Comments, NewEnergy has not attempted to address all questions raised by the Commission or all issues associated with the Plan. NewEnergy's failure to address any question or any provisions of the Plan should not be misconstrued as support for or indifference to such matters. Accordingly, NewEnergy reserves the right to submit additional or different comments on the remaining questions or in response to comments submitted by other stakeholders.

NewEnergy supports realistic efforts to advance renewable energy and appreciates the Governor's effort in this important policy matter. NewEnergy believes market forces are ultimately the best drivers of technological innovation and fuel diversity. However, NewEnergy notes that mandatory renewable energy portfolio standards ("RPS") will impose new costs that must ultimately be borne by consumers. Policy-makers should carefully weigh those cost considerations against the benefits to be derived from the RPS. Therefore, the Commission, the Governor, and other stakeholders should consider certain incentives as useful and practical means of encouraging the development of renewable energy resources in Illinois (*e.g.*, tax credits).

Generally, NewEnergy suggests that the following nine (9) conditions are advisable in the establishment of a RPS for the State of Illinois:

1. Timing of Compliance

Enforcement of any RPS mandate should be reconciled with the statutorily-mandated rate freeze and mandatory transition period, which expires on January 1, 2007 ("Transition Period"). Further, the RPS should be reconciled with the fact that it is likely that ARESs and electric utilities entered into long-term contracts for retail and wholesale power and electricity for the duration of the transition period under the regulatory rules of the game at that time. To introduce RPS compliance during the Transition Period would require ARESs and electric utilities to potentially be required to attempt to re-negotiate such arrangements, which ultimately may prove to be impossible. As such, supply of renewable energy to meet the RPS may not be available until the end of the Transition Period. NewEnergy supports methods that incentivize voluntary compliance during the Transition Period, however, and will discuss this in more detail below.

NewEnergy notes that the subsequent eight (8) conditions, as enumerated below, are predicated on this condition. As such, this first condition represents the supportive comments and suggestions that immediately follow.

2. The RPS Mandate Should be Applied in a Competitively Neutral Manner

The RPS requirements should apply equally to all ARESs and retail electric suppliers ("RES") and electric companies. This condition mirrors the recommendation of "competitive neutrality" made by the Rates Working Group in the Commission's Post-2006 Initiative Process. (*Post-2006 Rates Working Group Final Report, p.6.)*

Furthermore, costs for compliance with the RPS mandate should be borne in the commodity costs of both RESs and electric utilities. The Governor's Plan mentions cost-recovery pursuant to Rider 21. However, NewEnergy respectfully notes that Rider 21 is a ComEd-specific rider and is therefore only available to ComEd. The Plan does not propose a mechanism for how ARESs would recover such costs.

3. Regulatory Certainty

The magnitude and design of the RPS requirements should reflect the ability of Illinois RESs and electric utilities to reasonably procure renewable credits from eligible sources to satisfy the requirements (*e.g.*, must be feasible to procure the required energy credits, regional basis for procurement of credits, broad definition of eligible energy resources, etc.).

Here, NewEnergy recommends that regulatory responsibilities be clearly delineated and known to all stakeholders. Specifically, NewEnergy recommends that all oversight responsibilities be lodged in a single State agency. The Commission seems to be the natural choice, but others – such as the Department of Commerce and Economic Development ("DCEO") – might be suitable, as well.

Regulatory responsibilities should include, but not be limited, to: Calculations of RPS responsibilities; certification of projects and supply availability; determination of early compliance and credits; determination of compliance and penalties; and oversight and tracking of compliance trading.

4. Independent / Third-Party Verification of Supply & Demand

As noted above in Item No. 3, NewEnergy strongly urges the Commission to establish a method to certify that sufficient renewable energy resources are available for RESs and electric utilities to comport with the RPS mandate without unnecessarily driving up prices due to resource scarcity and creating unjustified windfalls for a few stakeholders. This certification should occur on an annual basis and in a sufficiently timely way.

5. Alternative Compliance Fee

If third-party analysis concludes that the percentage of electricity produced by renewable energy is insufficient, NewEnergy supports the imposition of an alternative compliance fee for avoidable shortfalls. As currently drafted, the Plan suggests a $25 per megawatt hour penalty. This penalty should be carefully reviewed. NewEnergy believes that alternative compliance fees, such as the one proposed in the Plan, would serve as a cap on costs associated with procuring renewable energy, and thereby mitigate risk to RESs and electric utilities. As such, if a RES or electric utility chose not to, or could not, obtain sufficient credits, it would pay an alternative compliance fee per MWh into the Renewable Energy Resources Trust Fund, as proposed in the Plan, to be used by the DCEO for purposes related to the development, construction, and utilization of renewable energy projects in Illinois.

6. Compliance Trading System

The Plan recommends that the Commission and DCEO investigate the feasibility of interstate trading of renewable energy credits with other states that have adopted RPS. The Plan correctly notes the importance of trading mechanisms that include facilities beyond Illinois. NewEnergy supports the creation of an efficient credit trading system that maximizes the value of credits and that cooperates smoothly with other states' systems, at least regionally.

NewEnergy submits that, in order to implement any RPS mandate, the Commission's (or DCEO's) trading system should be wholly compatible with the tradable markets of the PJM and MISO, respectively. Moreover, NewEnergy urges the trading of renewable energy credits ("RECs") within the PJM and MISO, respectively, in order to comport with the RPS mandate. As stated above, in Item No. 3, NewEnergy believes that the Commission is the appropriate agency within which to vest the responsibility of establishing a system of tracking and trading credits. Here, NewEnergy supports the recommendation of the Post-2006 Rates Working Group that compliance with an RPS mandate could be met through ownership of RECs issued by renewable energy generators. (*Post-2006 Rates Working Group Final Report, p.7.*)

Such a system should allow the "banking" of credits for future compliance. Specifically, RESs and electric utilities could avoid future penalties by meeting future RPS period levels with the addition of some modest premium – the obverse of early compliance credits. In other words, any trading system should carry forward any over-compliance with some ratio value above 1.1.

NewEnergy also recommends that the Plan incorporate a "compliance trading window", such as is permitted for SO_2 emissions compliance, subsequent to the RPS period for compliance trading to occur.

Lastly, in order to achieve a sustainable and growing supply of renewable energy sources, NewEnergy suggests that language should be included in the Plan to allow access to other markets with cooperative trading systems (such as NEPOOL or NYISO) in the future. For an explicit example, NewEnergy refers the Commission to the US EPA's well-functioning SO_2 emission trading system.

Such flexibility in meeting RPS requirements is critical in order to achieve a sustainable and growing share of renewable energy supply in Illinois without causing excessive financial burden to Illinois ratepayers. On this matter, NewEnergy notes that New Jersey adopted an RPS that requires a certain percentage of the electricity sold in the state be produced from renewable resources. This mandate evolved from a 2003 New Jersey Governor's Renewable Energy Task Force recommendation that the existing Class 1 RPS be increased to 20% by the year 2020 from the existing level of 4% in 2008. In New Jersey, RESs and electric utilities are permitted to meet their RPS commitments through facilities located within the state, within the PJM, or from facilities that can demonstrate delivery to PJM. The New Jersey Board of Public Utilities ("BPU"), through an independent consultant, conducted an economic impact analysis prior to considering such an increase. The BPU officially received the Economic Analysis Report ("Report") in December 2004. The Report concluded that, as a result of providing RESs and electric utilities with a measure of flexibility to meet the mandate, raising the RPS to 20% in New Jersey by the year 2020 compared to leaving the existing RPS in place would: 1) increase electricity prices by approximately 3.7% over 16 years, and 2) have a negligible impact on the growth of New Jersey's economy. A full version of the 200+ page Report is available on the BPU web site at www.bpu.state.nj.us. NewEnergy urges the Commission to adopt similar flexibility into any RPS mandate for Illinois.

7. Annual Reconciliation of Mandate and Credits

NewEnergy encourages the Commission to ensure compliance with the RPS through an annual reconciliation process. Rather than review RESs' and electric utilities' wholesale contracts – which is, on its face, overly cumbersome – NewEnergy suggests that RECs could be used to provide evidence of RESs' and electric utilities' procurement of electricity from eligible renewable sources. Each RES and electric utility would be assigned a portion of the RPS based on each entity's respective total aggregate load served in Illinois.

8. **Backloading RPS to Solve Various Problems**

As stated in Item No. 1, NewEnergy contends that enforcement of a mandatory RPS requirement prior to the cessation of the rate freeze runs afoul of the statutorily-mandated rate freeze, RES contracts, the electric utilities' power-purchase agreements, and supply availability. As such, NewEnergy strongly urges the Commission to begin mandatory compliance with the RPS in 2007.

At the same time, NewEnergy recommends that the Commission create incentives for effective voluntary compliance during the remainder of the Mandatory Transition Period. Specifically, NewEnergy urges the Commission to provide "early compliance" credits, on the basis of a sliding scale, to RESs and electric utilities that purchase renewable energy credits prior to 2007.

Moreover, since the adoption of an RPS is a governmental initiative, NewEnergy recommends that the Plan include an up-front pilot experiment wherein governmental customers would solicit power and electricity from renewable energy resources during the remainder of the Mandatory Transition Period. Such a pilot program, if enacted, would signal the great weight and import the State places on renewable energy resources and the benefits they provide. In addition, such a pilot program would create incentives for "early compliance" with the RPS prior to 2007. As such, NewEnergy believes that this would provide a sound and viable market-driven mechanism to achieve a sustainable and growing supply of renewable energy sources.

9. **Definition of Eligible Energy Resources**

NewEnergy recommends that, in addition to the resources enumerated in the Plan, methane recovered from landfills, as well as other existing renewable resources, as defined in the Illinois Electric Service Customer Choice and Rate Relief Law of 1997, and those that are eligible for Section 29 Federal Tax Credits, should also be included within the definition of eligible renewable energy resources.

Conclusion

NewEnergy appreciates this opportunity to comment on the Governor's Sustainable Energy Plan and to participate in the Commission's inquiry. We look forward to participating in the stakeholder process on these very important issues. We would be happy to discuss our comments with you, as well as with the other stakeholders, in greater detail.

Respectfully submitted,

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